

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREG WILLIAM FANTER,

Defendant.

8:8-CR-473**ORDER**

On November 14, 2022, defendant Greg William Fanter filed a document *pro se* titled “Notice of Tort Claim.” [Filing 283](#). The Court in its January 30, 2023, Memorandum and Order construed this filing as containing a habeas petition under [28 U.S.C. § 2255](#), a habeas petition under [28 U.S.C. § 2254](#), and a complaint brought under [42 U.S.C. § 1983](#) related to the conditions of his confinement. The Court then dismissed the portions of Fanter’s filing it construed as containing habeas petitions and ordered Fanter to file a notice with the Court stating that he wished to sever the portion of his filing bringing a [§ 1983](#) action within 28 days. [Filing 284 at 1–2](#); *see Spencer v. Haynes*, 774 F.3d 467, 471 (8th Cir. 2014) (holding that the district court must obtain the consent of the *pro se* litigant before converting his or her claims from a habeas proceeding to a *Bivens* action). The Court stated that if Fanter failed to provide notice, the Court would dismiss his attempt to file a [§ 1983](#) claim without prejudice. [Filing 284 at 2](#).

The deadline for Fanter to file notice passed on February 27, 2023. Fanter has not provided the Court with any notice. Therefore, the Court will dismiss Fanter’s attempt to file a [§ 1983](#) action without prejudice. *See Woodson v. Rios*, No. CIV 07-4795(JNE/JJG), 2008 WL 3166128, at *1 (D. Minn. Aug. 4, 2008) (adopting recommendation that the habeas petitioner’s petition be

dismissed without prejudice when the petitioner failed to file notice that he consented to the conversion of his habeas petition into a civil action). Accordingly,

IT IS ORDERED:

1. The portion of Fanter's filing at [Filing 283](#) asserting an action under 42 U.S.C. § 1983 is dismissed without prejudice; and
2. The Clerk of Court is ordered to terminate [Filing 283](#) as a pending motion as it has been fully resolved.

Dated this 14th day of March, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B.C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge